

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE: REFCO SECURITIES LITIGATION	:	07 MDL 1902 (JSR)
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KENNETH M. KRYSS, <i>et al.</i> ,	:	08 Civ. 7416 (JSR)
Plaintiffs,	:	
-against-	:	
ROBERT AARON, <i>et al.</i> ,	:	DECLARATION OF
Defendants.	:	B. JOHN PENDLETON, JR.
-against-	:	IN SUPPORT OF MOTION
	:	<u>FOR DEFAULT JUDGMENT</u>
PATRINA KHOO FARQUHARSON, ANDREW	:	
FEIGHERY, and CHRISTOPHER SUGRUE,	:	
Third-Party Defendants.	:	
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B. John Pendleton, Jr. declares as follows:

1. I am a partner at the law firm of DLA Piper LLP (US), counsel for Defendants/Third-Party Plaintiffs Derivative Portfolio Management, LLC, Derivative Portfolio Management, Ltd, DPM-Mellon, LLC, DPM-Mellon, Ltd. and Guy Castranova in the above-captioned action, and admitted to practice before this Court. I have personal knowledge of the matters set forth herein. I respectfully submit this declaration in support of Defendants'/Third-Party Plaintiffs' Motion for Default Judgment.

2. This is an action in which Plaintiffs seek to recover \$263 million (plus interest) in damages allegedly suffered by the SPhinX family of hedge funds, the lost business enterprise value and deepening insolvency damages allegedly suffered by SPhinX's investment manager, PlusFunds Group, Inc. and damages allegedly suffered by SPhinX investors.

3. On August 15, 2011 Defendants/Third-Party Plaintiffs filed an Amended Answer, Affirmative Defenses, Counterclaims and Third-Party Complaint. A true and accurate copy is annexed hereto as **Exhibit A**.

4. On October 6, 2011, this Court issued an Order Authorizing Service of Summons and Complaint on Defendant Christopher Sugrue. A true and accurate copy is annexed hereto as **Exhibit B**.

5. Pursuant to the terms of the October 6, 2011 Order, on October 11, 2011, Defendants/Third-Party Plaintiffs served on Sugrue true and accurate copies of the Amended Complaint; the Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint; Summons; and a copy of the October 6, 2011 Order. A copy of the October 11, 2011 letter with attachments is annexed hereto as **Exhibit C**.

6. On November 3, 2011, Defendants/Third-Party Plaintiffs filed an Affidavit of Service indicating that the Documents for Service were transmitted via electronic mail, but did not reach Mr. Sugrue via Federal Express. A true and accurate copy of the Affidavit of Service annexed hereto as **Exhibit D**. *See e.g., Philip Morris USA Inc. v. Veles Ltd.*, No. 06 Civ. 2988, 2007 WL 725412, at *2-3 (S.D.N.Y. Mar. 12, 2007) (finding that service by email pursuant to Fed. R. Civ. P. 4(f)(3) comports with constitutional requirements of due process).

7. Third-Party Defendant Sugrue has failed to answer, move or otherwise respond to the Third-Party Complaint.

8. Jurisdiction was properly obtained over Third-Party Defendant Christopher Sugrue by serving him with a copy of the Amended Answer, Affirmative Defenses, Counterclaim and Third-Party Complaint via e-mail, as evidenced in the Affidavit of Service.

9. Third-Party Defendant Sugrue is not an infant, in the military, or an incompetent person.

10. On December 2, 2011, Defendants/Third-Party Plaintiffs requested entry of default against Christopher Sugrue and submitted a declaration in support thereof dated December 1, 2011. A true and accurate copy of the Request for Entry of Default and Clerk's Certificate is attached hereto as **Exhibit E**.

11. A Clerk's Certificate of Default was executed by the Deputy Clerk of Court on December 2, 2011, certifying, *inter alia*, that Third-Party Defendant Sugrue has not filed an answer or otherwise moved with respect to the Third-Party Complaint. A true and accurate copy of the Clerk's Certificate of Default is attached hereto as **Exhibit F**.

12. As such, Defendants/Third-Party plaintiffs respectfully request that default judgment be entered against Christopher Sugrue pursuant to the Third-Party Complaint with the assessment of damages, costs, and interest awaiting the outcome of the remainder of the case.

13. I declare under the penalty of perjury that the foregoing is true and correct.

Dated: December 29, 2011

s/ B. John Pendleton, Jr.
B. JOHN PENDLETON, JR.